

HOUSE BILL 4126

By Bibb

AN ACT to amend Tennessee Code Annotated,
Section 12-3-214, relative to contract
protests.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-3-214, is amended by adding after subsection (b) the following language as new subsections (c) and (d) and re-designating existing subsections (c) and (d) accordingly:

(c) *Protest Bond Required.* (1) Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond. The protesting party shall post with the commissioner, at the time of filing a notice of protest, a bond payable to the state in the amount of five percent (5%) of the lowest bid evaluated. Such protest bond shall be in form and substance acceptable to the state and shall be immediately payable to the state conditioned upon a decision by the board of standards that:

(A) A request for consideration, protest, pleading, motion or other document is signed, before or after appeal to the board of standards, in violation of subsection (b);

(B) The protest has been brought or pursued in bad faith; or

(C) The protest does not state on its face a valid basis for protest.

(2) The state shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by the commissioner. If the protesting party appeals the commissioner's determination to the board of standards, the commissioner shall hold such protest bond until instructed by the board of standards to either keep the bond or return it to the protesting party.

(d) *Exemption from Bond Requirement.* At the time of filing notice of a protest of a procurement in which the lowest evaluated bid is less than one million dollars (\$1,000,000), a minority or small business protesting party may submit a written petition for exemption from the protest bond requirement of subsection (c). Such a petition must include clear evidence of minority or small business status. On the day of receipt, the petition shall be given to the commissioner or the commissioner's designee. The commissioner or the commissioner's designee has five (5) business days in which to make a determination. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted. Should the commissioner deny an exemption from the requirement, the protesting party shall post the protest bond with the commissioner as required in subsection (c) within three (3) business days of the determination. For purposes of this section, "minority business" is defined as solely owned or at least fifty-one percent (51%) owned by a person or persons who control the daily operation of such business and who is disabled (a person having a physical or mental impairment that in the written opinion of the person's licensed physician, substantially limits one (1) or more of the major life activities of such person, including caring for oneself, and performing manual tasks, which include writing, walking, seeing, hearing, speaking and breathing); African American (persons having origins in any of the Black racial groups of Africa); Asian American (persons having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the subcontinent or the Pacific Islands); Hispanic American (persons of Cuban, Mexican, Puerto Rican, Central or South American, or other Spanish or Portuguese origin, culture or descent, regardless of race,); or Native American (persons having origins in any of the original peoples of North America). For purposes of this section, "small business" is defined as one which is independently owned and operated, has total gross receipts of no more than two million

dollars (\$2,000,000) for the most recently ended federal tax year, and employs no more than thirty (30) persons on a full-time basis.

SECTION 2. Tennessee Code Annotated, Section 12-3-214, is further amended by adding after the last subsection the following language as a new subsection:

() *Appeal to Chancery Court.* Protests appealed to the chancery court from the board of standards shall be by common law writ of certiorari. The scope of review in the proceedings shall be limited to the record made before the board of standards and shall involve only an inquiry into whether the board of standards exceeded its jurisdiction, followed an unlawful procedure, or acted illegally, fraudulently or arbitrarily without material evidence to support its action.

SECTION 3. This act shall take effect on July 1, 2008, the public welfare requiring it.